

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Abandon Mobile, LLC,

Plaintiff, 07-CV-3828 (WHP)

-against-

**PROPOSED DISCOVERY PLAN  
OF ABANDON MOBILE, LLC**

CDC Games, Ltd.,

Defendant.

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**PROPOSED DISCOVERY PLAN  
OF ABANDON MOBILE, LLC**

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, and in accordance with this Court's July 5, 2007 Order for Pretrial Conference, Plaintiff Abandon Mobile, LLC ("Abandon") hereby submits the following proposed discovery plan. As set forth below, Defendant CDC Games, Ltd. ("CDC") has refused Abandon's numerous efforts to meet and confer as required by Rule 26(f). As such, Abandon submits this proposed discovery plan on its own.

**A. Abandon's Efforts to Meet and Confer with CDC Have Been Unsuccessful.**

Since this suit was initiated, Abandon has attempted several times to meet and confer with CDC's designated representative and in-house counsel, Mr. Albert Jok. Mr. Jok, however, has consistently ignored Abandon's many letters and e-mails. By letter to Mr. Jok dated August 2, 2007, Abandon requested CDC to meet and confer in advance of submitting this discovery plan

in accordance with this Court's July 5 Order. While service has been effected upon CDC,<sup>1</sup> no appearance has been entered on CDC's behalf.

Curiously, on the afternoon of August 9, 2007, the day before this filing was due, Abandon's counsel was contacted by Eugene Reynolds, Esquire, who identified himself as CDC's attorney in this action. Due to his recent retention and an upcoming vacation, Mr. Reynolds requested (i) a fifteen-day extension of time for CDC to respond to the complaint; and (ii) Abandon's consent to an adjournment and rescheduling of the August 17, 2007 Pretrial Conference. As a courtesy to Mr. Reynolds, Abandon agreed to his requests. *See E-Mail from I. Rosenau to E. Reynolds, dated August 9, 2007*, a true and correct copy of which is attached hereto as Exhibit A. In addition, Abandon's counsel e-mailed Mr. Reynolds a copy of its proposed discovery plan, and invited his feedback. *See E-Mail from W. Hill to E. Reynolds, dated August 9, 2007*, a true and correct copy of which is attached hereto as Exhibit B. However, a few hours later, at 4:09 p.m. on August 9, Mr. Reynolds informed Abandon's counsel via e-mail: "I may have jumped the gun in advising you that I will be representing the defendant" in this action. *See E-Mail from E. Reynolds to I. Rosenau and W. Hill, dated August 9, 2007*, a true and correct copy of which is attached hereto as Exhibit C. Abandon's counsel promptly informed Mr. Reynolds that the agreement to grant the requested extensions was a professional courtesy to him, which would not be extended to CDC if he were not CDC's

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<sup>1</sup> On August 1, 2007, Abandon served the complaint, summons, and this Court's July 5, 2007 Order for Pretrial Conference upon CDC by personally delivering those documents to CDC's Chief Financial Officer in Atlanta, Georgia.

counsel. *See* E-Mail from I. Rosenau to E. Reynolds, dated August 9, 2007, a true and correct copy of which is attached hereto as Exhibit D.

A conversation with Mr. Reynolds today, August 10, 2007, confirmed that he is not yet authorized to enter an appearance on CDC's behalf. As such, Abandon has not consented to an adjournment of the August 17, 2007 Pretrial Conference (or to an extension of the deadline for CDC's response to the complaint).

In any event, despite Abandon's efforts, it has been unable to meet and confer with CDC.

#### **B. Abandon's Proposed Discovery Plan**

Abandon's views and proposals concerning the issues addressed in Rule 26(f), which may change if and when CDC appears in this case and confers with Abandon as required by Rule 26(f), are as follows:

- **Rule 26(f)(1):** the Rule 26(a)(1) disclosures have not yet been made, since CDC has not entered its appearance and has ignored Abandon's requests to meet and confer. Abandon proposes that these disclosures be made within thirty days after CDC enters its appearance (if CDC chooses to appear).
- **Rule 26(f)(2):** Abandon suggests that discovery should be completed within six months. Abandon does not anticipate that discovery will need to be conducted in phases.
- **Rule 26(f)(3):** Abandon anticipates that discovery will include the disclosure of electronically stored information, which may need to be produced in electronic format.

- **Rule 26(f)(4):** Abandon does not at this time anticipate any issues relating to claims of privilege or of protection as trial-preparation material.
- **Rule 26(f)(5) and (6):** Due to the fact that CDC is headquartered in China, and the majority of CDC's witnesses reside in China, issues may arise concerning paper, electronic and testimonial discovery. As such issues arise, Abandon may need to seek the Court's intervention, for example, to alter the limitations on discovery imposed by the Federal and Local Rules of Civil Procedure, or to enter orders under Rule 26(c) or Rule 16(b) or (c). Since CDC has refused Abandon's requests to meet and confer as required by Rule 26(f), Abandon does not at this time know which type of relief, if any, it will need to seek from this Court regarding discovery.

Respectfully submitted,



Matthew J. Berger, Esq. (MB 7898)  
Klehr, Harrison, Harvey, Branzburg & Ellers LLP  
260 South Broad Street  
Philadelphia, PA 19102-5003  
(215) 568-6060  
Fax: (215) 568-6603  
Attorneys for Plaintiff,  
Abandon Mobile, LLC

Dated: August 10, 2007  
City, State: Philadelphia, Pennsylvania

**EXHIBIT A**

**From:** Rosenau, Ira(Ira Rosenau)  
**To:** egreyreynolds@aol.com  
**Date:** 8/9/2007 2:20:17 PM  
**Subject:** CDC Games

Gene:

This will confirm our conversation from today. You informed us that you will be entering an appearance on behalf of CDC Games in the litigation in the SDNY commenced by Abandon Mobile.

Because of your recent retention and a vacation you have scheduled for next week, you requested that plaintiff agree to (a) a 15 day extension from August 21st for defendant to respond to the complaint; and (b) adjourn and reschedule the 8/17 pretrial conference.

I have discussed the request with my client and plaintiff will agree to your requests.

If you are going to send something to the court regarding the pretrial conference, please let us (me and Bill Hill) see an advance copy so we can make any comments, additions or changes that we think are appropriate.

**CC:** mticotin@abandonent.com, Hill, William

**EXHIBIT B**

## **William Hill - Abandon Mobile, LLC v. CDC Games, Ltd.**

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**From:** William Hill  
**To:** egreyndols@aol.com  
**Date:** 8/9/2007 1:12 PM  
**Subject:** Abandon Mobile, LLC v. CDC Games, Ltd.  
**CC:** Rosenau, Ira

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Mr. Reynolds: pursuant to your discussion today with Mr. Rosenau, attached is the draft of the proposed discovery plan (due to be filed tomorrow) that we prepared before we heard from you. Please review it and let me know your thoughts a.s.a.p.

Regards,

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William T. Hill, Esq.  
Klehr, Harrison, Harvey, Branzburg & Ellers  
260 South Broad Street  
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215.569.2992 (phone)  
215.568.6603 (fax)  
[whill@klehr.com](mailto:whill@klehr.com)  
[www.klehr.com](http://www.klehr.com)

**EXHIBIT C**

## William Hill - Abandon Mobile, LLC v. CDC Games, Ltd.

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**From:** <Egjreynolds@aol.com>  
**To:** <IROSENAU@klehr.com>, <WHILL@klehr.com>  
**Date:** 8/9/2007 4:03 PM  
**Subject:** Abandon Mobile, LLC v. CDC Games, Ltd.

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Gentlemen:

I may have jumped the gun in advising you that I will be representing the defendant in the above referenced matter. An email was sent to me this morning, before I contacted you, basicly putting me on "hold". Unfortunately, that email was caught in a spam filter because it was sent to me from a different email address than prior emails, and I did not receive it until a few minutes ago.

I apologize for any inconvenience this may cause. I hope to have this straightened out this evening and will advise you accordingly.

Gene Reynolds

*Eugene G. Reynolds, Esq.  
Mullen & Reynolds, L.L.C.  
2740 Route 10 West  
Morris Plains, New Jersey 07950  
Tele. No. 973-267-0810  
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**EXHIBIT D**

**From:** Ira Rosenau  
**To:** Egjreynolds@aol.com, Hill, William  
**Date:** 8/9/2007 4:09:56 PM  
**Subject:** Re: Abandon Mobile, LLC v. CDC Games, Ltd.

Gene:

Our agreement to grant your requested extensions was done as a professional courtesy to you and your personal schedule. If you are not to be the counsel representing the defendant, then the basis for our agreement to the extension requests no longer exists and we will hold CDC to the current schedule in place before you communicated with us today.

-----Original Message-----

From: <Egjreynolds@aol.com>  
To: Rosenau, Ira <IROSENAU@klehr.com>  
To: Hill, William <WHILL@klehr.com>

Sent: 8/9/2007 4:01:56 PM  
Subject: Abandon Mobile, LLC v. CDC Games, Ltd.

Gentlemen:

I may have jumped the gun in advising you that I will be representing the defendant in the above referenced matter. An email was sent to me this morning, before I contacted you, basicly putting me on "hold". Unfortunately, that email was caught in a spam filter because it was sent to me from a different email address than prior emails, and I did not receive it until a few minutes ago.

I apologize for any inconvenience this may cause. I hope to have this straightened out this evening and will advise you accordingly.

Gene Reynolds

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

**Abandon Mobile, LLC,  
Plaintiff,**

-against-

**07-CV-3828 (WHP)**

**CDC Games, Ltd.,  
Defendant.**

**PROOF OF SERVICE  
OF PROPOSED  
DISCOVERY PLAN**

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I, Mathew J. Borger, am a member of the Bar of this Court and a partner at Klehr, Harrison, Harvey, Branzburg & Ellers LLP, counsel for Plaintiff Abandon Mobile, LLC in the above-captioned matter. I hereby certify that on August 10, 2007, I caused a true and correct copy of Plaintiff's Proposed Discovery Plan to be served upon the following by Federal Express International Mail and e-mail:

CDC Games, Ltd.  
15/F Tower C2  
Oriental Plaza, No. 1  
Beijing, China 100728  
Attention: Albert Jok, Esquire  
(albert.jok@cdccorporation.net);

upon the following via Federal Express:

Michael Latimore  
Chief Financial Officer, CDC Games LTD.  
CDC Software  
Two Concourse Parkway  
Suite 800  
Atlanta, GA 30328;

and upon the following via Federal Express and e-mail:

Eugene G. Reynolds, Esquire  
Mullen & Reynolds, L.L.C.  
2740 Route 10 West  
Morris Plains, NJ 07950  
(egreynolds@aol.com)

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



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Attorneys for Plaintiff,  
Abandon Mobile, LLC

Dated: August 10, 2007  
City, State: Philadelphia, Pennsylvania